

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

DE LA CRUZ & ASSOCIATES, INC.

Plaintiff

v.

TRANSFORM SR DE PUERTO RICO LLC,
et al.

Defendants

CIVIL NO. 21-1052 (RAM)

MEMORANDUM AND ORDER

Before the Court is the Magistrate Judge's June 14, 2021 Report and Recommendation ("R & R"). (Docket No. 54). After presiding over a lengthy evidentiary hearing, the Magistrate Judge issued a detailed R & R recommending that Plaintiff De La Cruz & Associates, Inc.'s ("Plaintiff" or "DLCA") request for prejudgment attachment at Docket No. 9 be granted in part and denied in part. Id. at 52. Plaintiff and co-defendants Transform SR de Puerto Rico LLC ("Transform SR") and Transform KM, LLC ("Transform KM"), (collectively "Defendants" or "Transform") filed timely objections to the R & R. (Docket Nos. 56 and 58).

Upon conducting a *de novo* review of the R & R as required by Fed. R. Civ. P. 72(b)(3) and 28 U.S.C. § 636(b)(1), the Court finds that even if DLCA successfully established a likelihood of success on the merits, there is not a serious "risk that the plaintiff will not be able to execute the judgment." Santos-Rodriguez v.

Viera-Torres, 2011 WL 13350253, at *5 (D.P.R. 2011). See also Detersol, S.A. de C.V. v. Benso Corp., 2011 WL 4371917, at *3 (D.P.R. 2011) (finding that to secure a prejudgment attachment, "the party must show that the provisional remedy is 'reasonable and adequate ... to guarantee the effectiveness of the judgment which in due time may be rendered.'") (quoting HMG Property v. Parque Industrial Río Canas, Inc., 847 F.2d 908, 914 (1st Cir. 1998)).

In its *Complaint*, Plaintiff seeks a judgment against Transform totaling \$892,262.52. (Docket No. 1 at 5). According to the testimony provided during the prejudgment attachment hearing, Transform KM's Puerto Rico operations have approximately \$13 million in gross assets, 50% of which corresponds to liabilities. (Docket No. 50 at 61-64). On its part, Transform SR's Puerto Rico gross assets amount to \$17 million, approximately 80% of which are liabilities. Id. at 62-63. Consequently, Defendants have roughly \$9.5 million in net assets. Furthermore, the Sears store in Plaza Las Américas currently generates an average of \$300,000 in sales per week, while the Puerto Rico Kmart Store produces between \$230,000 and \$250,000 in sales per week. (Docket No. 49 at 14). As of May 2021, the combined year-to-date sales are approximately \$19 million. (Docket No. 50 at 15-16). The profit margin from these sales fluctuates between 30% and 34%, totaling approximately \$6 million. Id. at 17. Additionally, Defendants rent sales space

within their stores for rates as low as \$1,200 and as high as \$15,000 a month. (Docket No. 49 at 15-19).

The R & R notes Transform has suffered past losses and has not issued externally audited financial statements since 2018. (Docket No. 54 at 47). However, given Defendants' continued sales and rent revenue, compliance with its rent and tax obligations, as well as support from its parent company, there is sufficient evidence on the record that Transform has adequate capacity to satisfy any future judgment in this case. See Detersol, 2011 WL 4371917, at *5 (D.P.R. 2011) ("the court must assess [defendant]'s capacity to pay any judgment entered against it."). Therefore, prejudgment attachment is not proper.

The Court hereby **REJECTS** the Magistrate Judge's recommendation (Docket No. 54) and, accordingly, **DENIES** Plaintiff's request for prejudgment attachment (Docket No. 9).

IT IS SO ORDERED.

In San Juan Puerto Rico, this 1st day of September 2021.

S/ RAÚL M. ARIAS-MARXUACH
United States District Judge